1761551N25A - SH-AD-32A (OPES) (4/91)

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

DATE: December 14, 2004

EXECUTIVE FORCE REVIEW COMMITTEE
POLICY ASSESSMENT
DISPOSITION SHEET

FILE NO: #2112508

FROM: KENNETH J. BRAZILE, COMMANDER
THOMAS P. ANGEL, COMMANDER

TO: KARYN MANNIS, CAPTAIN
INTERNAL AFFAIRS BUREAU

SUBJECT: [redacted] DEPUTY #[redacted] NORWALK STATION, FOR III

On March 5, 2004, deputies investigating a traffic collision were advised of the armed robbery of a nearby bank. Deputy [redacted] drove toward the last seen direction of the suspect. Within seconds he was advised via radio of a vehicle description (white Cadillac) and the fact that a suspect might be hiding in the trunk. Deputy [redacted] saw a Public Safety vehicle following a white Cadillac. Deputy [redacted] began following the Cadillac and waited for additional patrol units to assist him. Without warning, the Cadillac pulled over to the curb. Deputy [redacted] stopped about 50 feet behind the Cadillac. Almost immediately, the trunk to the Cadillac opened and a male, Donald Franks, sat up and pointed a handgun at Deputy [redacted] Deputy [redacted] took a position in the "V" of his patrol car door and fired eight rounds at Franks. Franks fell back into the trunk and out of sight. Additional units arrived and the driver of the Cadillac was taken into custody. Special Enforcement Bureau (SEB) personnel responded and used an armored vehicle to approach the Cadillac and determine that Franks was deceased, with a single gunshot wound to the abdomen. Money taken in the bank robbery and a pellet pistol were recovered from the trunk.

On December 9, 2004, the Executive Force Review Committee convened and conducted a review regarding the facts of this case. The applicable policies that were evaluated by the committee were: 3-01/025.00, Use of Force; 3-01/025.30, Use of Firearms and Deadly Force; 3-01/025.10, Unreasonable Force; and 3-01/050.10, Performance to Standards. Concerning:

3-01/025.00, Use of Force, 3-01/025.30, Use of Firearms and Deadly Force, and 3-01/025.10, Unreasonable Force, the Committee determined that the force used by Deputy [redacted] was reasonable and necessary and in compliance with Department policy.

3-01/050.10, Performance to Standards, the Committee determined that the tactics employed by all personnel in this incident were within Department Policy.

Kenneth J. Brazile, Commander

Table of Contents

SH 2112508

Los Angeles County Sheriff's Department
Officer Involved Shooting

Report Date: 03-05-04	Bureau/Station/Facility: NORWALK STATION	Admin. Invest.? ☐	Hit? ☒

Incident Information

URN: 004-04506-0455-013	Date: 03-05-04 Time: 1336 Hours
City or Station: Norwalk	Nature of Incident: Suspect s flee bank after committing an armed robbery. One suspect hides in the trunk of suspect vehicle. Deputy[redacted]ees suspect vehicle and stops behind it as it comes to a stop on Roseton Ave.. Suspect opens trunk, sits up an points a handgun at Deputy[redacted] Deputy[redacted]ires eight rounds striking the Suspect in the lower torso. Suspect is pronounced dead at the scene.
Location: Roseton Avenue, north of Van Ruiten Street.	

Location Type (*circle one or more*): Backyard, Beach, Business, Freeway, Industrial, Park, Parking Lot, (Residence) [circled], Rural, School, Street, Other: ________

Lighting (*circle only one*): Darkness, (Daylight) [circled], Other, Street Lights

Weather (*circle only one*): (Clear) [circled], Cloudy, Fog, Rain

Distance: 35-40 Feet

Incident Type (*circle one or more*): Accidental, (Armed Person) [circled], Fleeing Suspect, Foot Pursuit, Gun Take Away, Moving Vehicle, Sniper/Ambush, Startle, Struggle Involved, Traffic Stop, Unarmed Person, Unintentional, Vehicle Pursuit, Warrant Service, Other: ________

Initiated by (*circle only one*): Arrest Warrant, Call, (Observation) [circled], One Person Unit, Other, Search Warrant, Two Person Unit

Prior Activity (*circle only one*): Detective, Inmate Transport, Other, (Routine Patrol) [circled]

Total # of Shots Fired by Deputy	Total # of Shots Fired by Suspect	Aero Unit?	Canine Unit?
8	0	☒	☐

Employee Witnesses

Employee #	Last Name	First Name	M.I.	ShiftTime (*circle only one*)	ShiftType (*circle only one*)
[redacted]	Granek	Michael		EM PM (Day)	(Regular) Overtime Off Duty
				EM PM Day	Regular Overtime Off Duty
				EM PM Day	Regular Overtime Off Duty

Non-Employee Witnesses

Last Name	First Name	M.I.	Street Address	City	Zip Code	Work Ph	Home Ph
Yordt	Joshua	J.	12700 Norwalk Boulevard	Norwalk	90650	562-929-5732	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Supervisors

Employee #	Last Name	First Name	M.I.	(*circle one or more*)
[redacted]	Wagner	Thomas		(On Duty) Present during shooting Witness to shooting Involved in shooting
[redacted]	[redacted]	[redacted]		(On Duty) Present during shooting Witness to shooting Involved in shooting

Watch Sergeant

Employee #	Last Name	First Name	M.I.
[redacted]	Anderson	Judy	

Watch Commander

Employee #	Last Name	First Name	M.I.
[redacted]	Estrada	Rafael	

PSTD Use Only

SH # SH212508

Officer Involved Shooting

URN: 004-04506-0455-013

Rollout Information

Arrival Date	Arrival Time	Date Submitted	Date of Recommendation
03-05-04	1640		

Employee #	Last Name	First Name	M.I
[redacted]	Sutton	Wes	M.
[redacted]	Smith	Richard	
[redacted]	Seno	Bennett	

Shooting / Force Information

Method

(AW) Arwen
(BC) Baton:(Control)
(BI) Baton:(Impact)
(BF) Bodily Fluids
(CN) Canine
(CR) Carotid Restraint
(CH) Choke Hold
(CT) Control Holds:(Control Techniques)
(TT) Control Holds:(Team Takedown)
(TD) Control Holds:(Takedown)
(CE) Chemical
(OC) Chemical Agents (OC Spray)
(TG) Chemical Agents (Tear Gas)
(EX) Explosives
(FH) Firearm (Handgun)
(FR) Firearm (Rifle)
(FS) Firearm (Shotgun)
(FO) Firearm (Other)
(FB) Flashbang
(FL) Flashlight
(OE) Other Weapon: Edged
(OV) Other Weapon: Vehicle
(OB) Other Weapon: Blunt Object
(OO) Other Weapon: Other
(PK) Personal Weapon: Feet/Leg: (Kick)
(PS) Personal Weapon: Feet/Leg: (Sweep)
(PH) Personal Weapon (Hand/Arm)
(PP) Personal Weapon (Push)
(PO) Personal Weapon (Other)
(RS) Resistance
(CN) Restraint Device (Capture Net)
(RH) Restraint Device (Handcuffs)
(HB) Restraint Device:Hobble (Legs Only)
(TP) Restraint Device:Hobble (TARP)
(RE) Restraint Device: REACT Belt
(SP) Sap
(SH) Shield
(SG) 37mm Stinger
(SB) Sting Ball
(ST) Stun Bag
(TR) Taser
(UC) Uncooperative

Type of Injury

(AB) Abrasion
(BR) Bruise
(BU) Burn
(CP) Complaint of Pain
(CO) Concussion
(DH) Death
(DI) Dislocation
(DB) Dog Bite
(FR) Fractures
(GS) Gunshot
(HB) Human Bite
(LC) Lacerations
(ND) Nerve Damage
(OD) Organ Damage
(PA) Paralysis
(PW) Puncture Wound
(SD) Soft Tissue Damage
(ST) Sprain/Twists
(UN) Unconscious

(RM) Refused Med Treatment

(NN) NONE

Body Part Injured

(AD) Abdomen
(AK) Ankle
(AR) Arm
(BK) Back
(BT) Buttocks
(CH) Chest
(EL) Elbow
(FA) Face
(FE) Feet
(FI) Fingers
(GE) Genitals
(GR) Groin
(HD) Hand
(HE) Head
(HI) Hip
(IN) Internal
(KN) Knees
(LE) Leg
(NK) Neck
(SH) Shoulder
(WR) Wrist

Brand

(AK) AK-47
(BN) Benelli
(BR) Beretta
(BW) Browning
(CH) Charter Arms
(CO) Colt
(DA) Davis Industries
(GL) Glock
(HA) Harrington & Richardson
(HI) Hi Standard
(HK) H & K
(IT) Ithica
(IV) Iver Johnson
(JE) Jennings
(LO) Lorcin
(LU) Luger
(MA) Marlin
(MO) Mossberg
(NC) NCI aka SKS
(NA) North American
(NO) Norinco
(RA) Raven
(RM) Remington
(RG) RG
(RI) RGI
(RO) Rossi
(SW) Smith & Wesson
(SR) Sturm Ruger
(ST) Sterling
(TA) Taurus
(WE) Weatherby
(WN) Winchester
(US) US Government
(YY) Handmade (Inmate)
(XX) Homemade (Non-Inmate)
(ZZ) Other Brand

Caliber

(9) 9 mm
(10) 10 mm
(12) 12 guage
(20) 20 guage
(21) .22-250
(22) .22 caliber
(23) .223 caliber
(24) .243 caliber
(25) .25 caliber
(30) .308 caliber
(35) .357 caliber
(36) 30-60 caliber
(38) .38 caliber
(40) .40 caliber
(41) .410 guage
(44) .44 caliber
(45) .45 caliber
(50) 50 mm
(SL) Slug
(WW) Other caliber

FORCE APPLIED *(one code per block)*

Used By (E# or S#)	Used Against (E# or S#)	Method (Code)	Brand (Code)	Caliber (Code)	Authorized Weapon? (Y/N)	Authorized Ammunition? (Y/N)	Type of Injury (Code)	Body Part (Code)
S #1	E #1	FH	ZZ	WW	N	N	NN	
E #1	S #1	FH	BR	9	Y	Y	GS	AD

Officer Involved Shooting
Involved Employee Information

URN: 004-04506-0455-013

Involved Employee

E 1

Employee # [redacted]	Last Name [redacted]	First Name [redacted]	M.I. [redacted]
Sex: [redacted] Race: [redacted]	Rank [redacted]	Unit Assignment: [redacted]	Work Assignment (Unit #, Module, etc.): [redacted]
ShiftTime (*circle only one*): [redacted]	ShiftType (*circle only one*): [redacted]	Intoxication/Drug Usage? ☐	Substance Used:
Hospital Admission? ☐	Hospital Name:	Coroner Case? ☒	Coroner Case # 2004-01898 — Interviewed? ☒
Hrs of sleep prior to shooting: [redacted]	Duty Time (hrs): [redacted]	Clothing (*circle only one*): Plain Clothes no Vest, Raid Jacket w/ Vest, Plain Clothes w/ Vest, Uniform no Vest, Raid Jacket no Vest, (Uniform w/ Vest — circled)	Other Factors:
Age: [redacted] Height: [redacted]	Weight: [redacted]		
Range Qualification Date: [redacted]		PPC Qualification Date: [redacted]	Laser Training Date: [redacted]
Certified with Weapon Used? [redacted]	Patrol Certification? [redacted]	Certification Unit: [redacted]	Prior Shootings? [redacted] Number of Prior Shootings: [redacted]
Field Training Officer Emp # [redacted]	Last Name [redacted]	First Name [redacted]	M.I. [redacted]
Field Training Officer Emp # [redacted]	Last Name [redacted]	First Name [redacted]	M.I. [redacted]

E__

Employee #	Last Name	First Name	M.I.
Sex: Race:	Rank	Unit Assignment:	Work Assignment (Unit #, Module, etc.):
ShiftTime (*circle only one*): EM PM Day	ShiftType (*circle only one*): Regular Overtime Off Duty	Intoxication/Drug Usage? ☐	Substance Used:
Hospital Admission? ☐	Hospital Name:	Coroner Case? ☐	Coroner Case # — Interviewed? ☐
Hrs of sleep prior to shooting:	Duty Time (hrs):	Clothing (*circle only one*): Plain Clothes no Vest, Raid Jacket w/ Vest, Plain Clothes w/ Vest, Uniform no Vest, Raid Jacket no Vest, Uniform w/ Vest	Other Factors:
Age: Height:	Weight:		
Range Qualification Date:		PPC Qualification Date:	Laser Training Date:
Certified with Weapon Used? ☐	Patrol Certification? ☐	Certification Unit:	Prior Shootings? ☐ Number of Prior Shootings:
Field Training Officer Emp #	Last Name	First Name	M.I.
Field Training Officer Emp #	Last Name	First Name	M.I.

E__

Employee #	Last Name	First Name	M.I.
Sex: Race:	Rank	Unit Assignment:	Work Assignment (Unit #, Module, etc.):
ShiftTime (*circle only one*): EM PM Day	ShiftType (*circle only one*): Regular Overtime Off Duty	Intoxication/Drug Usage? ☐	Substance Used:
Hospital Admission? ☐	Hospital Name:	Coroner Case? ☐	Coroner Case # — Interviewed? ☐
Hrs of sleep prior to shooting:	Duty Time (hrs):	Clothing (*circle only one*): Plain Clothes no Vest, Raid Jacket w/ Vest, Plain Clothes w/ Vest, Uniform no Vest, Raid Jacket no Vest, Uniform w/ Vest	Other Factors:
Age: Height:	Weight:		
Range Qualification Date:		PPC Qualification Date:	Laser Training Date:
Certified with Weapon Used? ☐	Patrol Certification? ☐	Certification Unit:	Prior Shootings? ☐ Number of Prior Shootings:
Field Training Officer Emp #	Last Name	First Name	M.I.
Field Training Officer Emp #	Last Name	First Name	M.I.

See Other Side

Officer Involved Shooting
Suspect Information

URN: 004-04506-0455-013

Suspect Information

S 1

Last Name: Franks		First Name: Donald	M.I.:
AKA Last Name:		First Name:	M.I.:
Sex: M Race: White	Street Address: [redacted]	City: [redacted]	State & Zip Code: [redacted]
Work Phone: [redacted]	Home Phone: [redacted]	Social Security #: [redacted]	Driver's License #: [redacted]
Age: 49 D.O.B. 02/18/55	Height: 5'09" Weight: 180	FBI #: [redacted]	CII #: [redacted]
Booking #: Deceased	Primary Charge:	Secondary Charge:	
Coroner Case? ☒	Coroner Case #: 2004-01898	Intoxication/Drug Usage? ☐	Substance Used:
Armed? ☒	Apprehended? ☐	Mental Illness? ☐	Criminal History? [redacted]
Vehicle Make: Cadillac		Model: DeVille	Year: 1993

S 2

Last Name: Fetters		First Name: Dennis	M.I.: P
AKA Last Name:		First Name:	M.I.:
Sex: M Race: White	Street Address: [redacted]	City: [redacted]	State & Zip Code: [redacted]
Work Phone: [redacted]	Home Phone: [redacted]	Social Security #: [redacted]	Driver's License #: [redacted]
Age: 56 D.O.B. 06/09/47	Height: 5'06" Weight: 152	FBI #: [redacted]	CII #: [redacted]
Booking #: 8038-227	Primary Charge: 187(A) PC	Secondary Charge: 211 PC	
Coroner Case? ☐	Coroner Case #:	Intoxication/Drug Usage? ☐	Substance Used:
Armed? ☐	Apprehended? ☒	Mental Illness? ☐	Criminal History? [redacted]
Vehicle Make: Cadillac		Model: DeVille	Year: 1993

S__

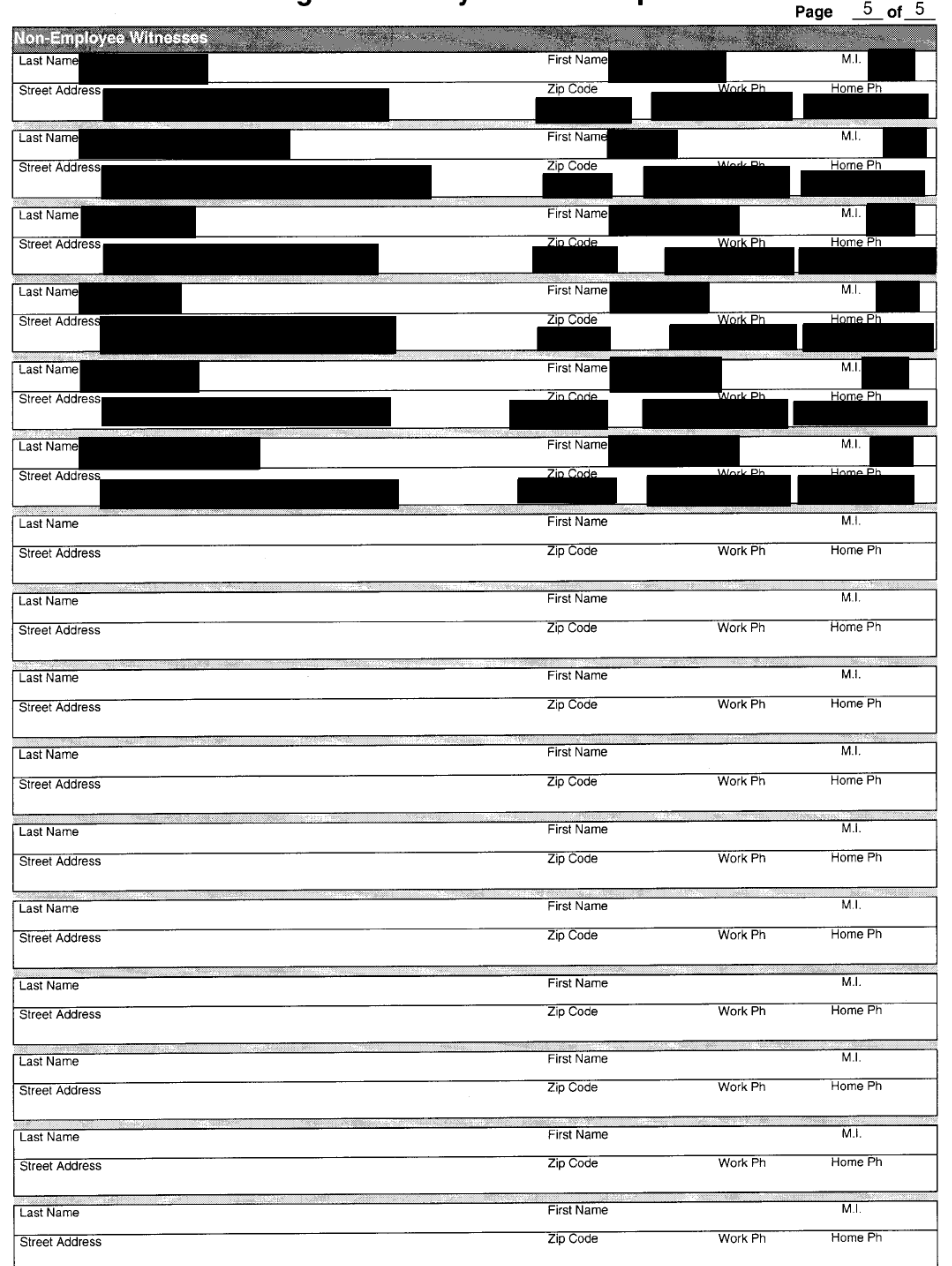
Last Name:		First Name:	M.I.:
AKA Last Name:		First Name:	M.I.:
Sex: Race:	Street Address:	City:	State & Zip Code:
Work Phone:	Home Phone:	Social Security #:	Driver's License #:
Age: D.O.B.	Height: Weight:	FBI #:	CII #:
Booking #:	Primary Charge:	Secondary Charge:	
Coroner Case? ☐	Coroner Case #:	Intoxication/Drug Usage? ☐	Substance Used:
Armed? ☐	Apprehended? ☐	Mental Illness? ☐	Criminal History? ☐
Vehicle Make:		Model:	Year:

S__

Last Name:		First Name:	M.I.:
AKA Last Name:		First Name:	M.I.:
Sex: Race:	Street Address:	City:	State & Zip Code:
Work Phone:	Home Phone:	Social Security #:	Driver's License #:
Age: D.O.B.	Height: Weight:	FBI #:	CII #:
Booking #:	Primary Charge:	Secondary Charge:	
Coroner Case? ☐	Coroner Case #:	Intoxication/Drug Usage? ☐	Substance Used:
Armed? ☐	Apprehended? ☐	Mental Illness? ☐	Criminal History? ☐
Vehicle Make:		Model:	Year:

See Other Side

SUPPLEMENTAL NON-EMPLOYEE WITNESSES
Los Angeles County Sheriff's Department



Non-Employee Witnesses

Last Name	First Name	M.I.	Street Address	Zip Code	Work Ph	Home Ph
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

INVESTIGATIVE SUMMARY
USE OF FORCE
OFFICER INVOLVED SHOOTING
(SUSPECT DECEASED)

NORWALK STATION
IAB#SH2112508
URN: 004–04506-0455-013

On March 05, 2004 at approximately 1330 hours Deputy [redacted] was assisting other deputies, who were investigating a traffic collision, near the Washington Mutual Bank at 11618 Rosecrans Avenue. Employee's from the bank yelled at Deputy [redacted] saying they had just been robbed. The employees directed Deputy [redacted] to the direction the suspect was last seen in the parking lot. As Deputy [redacted] drove he received information via his radio that the suspect vehicle was a white Cadillac. Deputy [redacted] exited the parking lot and saw a white Cadillac being followed by a Norwalk Public Safety vehicle. Additional information was broadcast that one of the suspects may been in the trunk of the white Cadillac.

The Cadillac turned west onto Van Ruiten Street then north onto Roseton Avenue. Deputy [redacted] pulled up behind the Cadillac, which pulled over and stopped at the east curb of Roseton Avenue. Deputy [redacted] stopped his patrol car approximately 50 feet behind the Cadillac. The trunk lid on the Cadillac opened and a male (Donald Franks) sat up, pointing a handgun at Deputy [redacted] Deputy [redacted] positioned himself behind his open drivers door, pointing his gun at the vehicle.

Fearing he was going to be shot, Deputy [redacted] fired eight rounds from his Department issued Beretta at Suspect Franks, striking him in the lower torso. Suspect Franks fell back into the trunk and did not move. The driver (Dennis Fetters) was taken into custody without incident.

Suspect Franks was pronounced dead at the scene. Suspect Fetters and Deputy [redacted] were not inured. Suspect Franks was armed with a "Crossman" pellet gun.

INVOLVED PERSONNEL:

[redacted] # [redacted]

SUSPECT/INMATE:

FRANKS, Donald MW/49 Deceased
[redacted]
DOB: 02-18-55

A check of the CCHRS (Consolidated Criminal History Reporting System) revealed that Suspect Franks [redacted]

FETTERS, Dennis MW/56 Booking #8038-227
[redacted]
DOB: 06-09-47

A check of the CCHRS (Consolidated Criminal History Reporting System) revealed that Suspect Fetters [redacted]

SWORN EMPLOYEE WITNESSES:

GRANEK, Michael, Deputy #[redacted]
Office of Homeland Security
Aero Bureau
Unit: Air-7

CIVILIAN WITNESSES:

YORDT, Joshua MW/Adult
Public Safety Officer, City of Norwalk
12700 Norwalk Boulevard
Norwalk, California 90650
Work Phone #562-929-5732

[redacted] MW/23 DOB [redacted]



[redacted] MW/24 DOB: [redacted]

[redacted] MH/20 DOB: [redacted]

[redacted] FW/56

[redacted] FW/35 DOB: [redacted]

[redacted] FH/39 DOB: [redacted]

[redacted] MH/73 DOB: [redacted]

[redacted] FH/Adult

EMPLOYEE WORK HISTORY:

[redacted]

Date of Employment
Date assigned to Patrol
Completed Patrol Training
Prior Shooting Incident(s)
Prior Founded Force Incidents


[redacted]

SUSPECT INJURIES:

Franks, Donald (Deceased)

The following injuries are documented in the Autopsy Report submitted by Stephen Scholtz, Deputy Medical Examiner (Refer to Homicide Book, Exhibit #A, Page #95).

The cause of death was determined to be from a single gunshot wound to the abdomen (Refer to Photographs, Exhibit #B & H).

Fetters, Dennis

Suspect Fetters was not injured in the incident (Refer to Photograph, Exhibit #B).

DEPUTY INJURIES:

No Deputy Personnel were injured in the incident.

PHYSICAL EVIDENCE:

The crime/shooting scene and evidence was processed by Investigator Lopez and Sergeant Wegener (Refer to Homicide Book, Exhibit #A, Page #15).

INVESTIGATOR OBSERVATIONS:

Investigators Lopez and Sergeant Wegener's observations are noted in their supplemental report (Refer to Homicide book, Exhibit #A, Page #15).

I (Sgt. Sutton) arrived at the scene and observed a Los Angeles County Sheriff's patrol car parked approximately 50 feet behind a white, 1993 Cadillac. The patrol car was parked off-set to the left of the suspect vehicle. Both vehicles were facing north on Roseton Avenue, north of Van Ruiten Street (Refer to Photographs, Exhibits #C & D).

I saw 4 expended shell casing on the asphalt near the patrol car. There was also a "Crossman" air-pistol laying on the asphalt, behind the suspect vehicle (Refer to Photographs, Exhibit #E & I).

Suspect Franks (deceased) was lying on his back inside the open trunk of the suspect vehicle (Refer to Photographs, Exhibit #G).

I also saw bullet strikes to the rear of the suspect vehicle and bullet exit holes to the windshield. There was also a large sum of money in the trunk near Suspect Franks (Refer to Photographs, Exhibit #F).

WEAPONS USED BY DEPUTY PERSONNEL:

[redacted]

Deputy [redacted] fired 8 rounds from his Department issued Beretta, 9mm, semiautomatic handgun. Homicide Investigator Barron took possession of his gun and submitted it to Firearms Examiner, James Carroll (Refer to Homicide Book Exhibit #A, Page #84).

Deputy [redacted] had performed a tactical reload at the scene and a fully loaded magazine had been inserted into the gun. The magazine used during the shooting contained 7 live rounds. Deputy [redacted] is a [redacted] handed shooter and carries his weapon with 15 rounds in the magazine and one round in the chamber.

WEAPONS USED BY SUSPECT:

Franks, Donald

The suspect was armed with a "Crossman," Repeat Air model 1008, carbon dioxide propelled pellet gun. The gun was recovered with 7 pellets in the pellet clip (Refer to Homicide Book, Exhibit #A, Page #84 and Photograph, Exhibit #E).

Fetters, Dennis

Suspect Fetters was not armed at the time of this incident.

PROPERTY DAMAGE:

The following list of property damage was observed and documented by Firearms Examiner, James Carroll (Refer to Homicide Book, Exhibit #A, Page #83).

The below listed damage was located on the suspect vehicle, a 1993 Cadillac, CA #[redacted] (Refer to Photographs, Exhibit #F).

- Bullet strike to right side of trunk
- Two bullet holes through trunk lid
- Bullet hole in rear window
- Bullet hole in rear license plate
- Bullet hole to windshield (likely the same bullet that passed through rear window)

IAB Note: The bullets that passed through the vehicle were not located and the only damage located was to the suspect vehicle.

CRIMINAL INVESTIGATOR and CHARGES FILED:

Fetters, Dennis

Investigator's Name	Sergeant Chris Brackpool Detective Margarita Barron
Court	Downey
Charges Filed	187(a) PC, 211 PC (4 Counts), 245 (c) PC
Court Date	06/15/04
Case Number	VA081549

IAB Note: On June 15, 2004, Suspect Fetters pled guilty to four counts of second degree robbery and was immediately sentenced to four years in state prison.

Franks, Donald (deceased)

None filed.

LIGHTING OR WEATHER CONDITIONS:

The incident occurred at approximately 1336 hours, during daylight. The weather was warm and clear.

INVOLVED EMPLOYEES STATEMENTS:

Deputy [redacted]

The following statement is summarized from the interview and supplemental report submitted by Sergeant Brackpool and Investigator Barron of Homicide Bureau (Refer to Homicide Book, exhibit #A, Page #10). The following is a summary of that interview.

Deputy [redacted] said on March 05, 2004, at approximately 2023 hours he was assisting on a traffic collision, located at Rosecrans Avenue and Fallon Avenue in the City of Norwalk. He said he was in his marked patrol car facing west bound on Rosecrans Avenue when several people came running across the street yelling to him that the Washington Mutual Bank had just been robbed. The people were pointing, saying the suspect vehicle was westbound on Rosecrans Avenue.

Deputy [redacted] drove westbound on Rosecrans Avenue when more people pointed towards the Savon Drug Store parking lot. Deputy [redacted] drove through the parking lot and exited on Van Ruiten Street. Deputy [redacted] then followed a Norwalk Public Safety Officer's (Officer Yordt) vehicle that was following a white Cadillac. The white Cadillac was the possible vehicle used in the robbery. Deputy [redacted] said Deputy Tauson had given a radio broadcast, indicating the suspect vehicle description and that one of the suspects may be in the trunk.

Deputy [redacted] said he pulled around Officer Yordt's vehicle and behind the suspect vehicle as it turned north onto Roseton Avenue from Van Ruiten Street. At this point the suspect vehicle slowed to 5 to 10 MPH. Deputy [redacted] broadcast that he was "Code-9" behind the suspect vehicle and did not intend on conducting a stop on the vehicle until sufficient back-up arrived. Deputy [redacted] said his main focus was the trunk of the suspect vehicle, however he continued to also watch the driver (later identified as Suspect Fetters). He said Suspect Fetters appeared nervous as he repeatedly looked in his rearview mirror a looked back over his shoulder.

Deputy [redacted] said as the suspect vehicle made the turn onto Roseton Avenue, the trunk appeared to be slightly open as it moved up and down. The suspect vehicle then pulled to the east curb line of Roseton Avenue and traveled about 20 feet before stopping. Deputy [redacted] said he had not activated his lights or siren. He said the trunk then suddenly flew open and a male (later identified as Suspect Franks) popped up, possibly on his knees in the trunk. Suspect Franks pointed a handgun in Deputy [redacted] direction, which surprised and scared him [redacted]

Deputy [redacted] said fearing that he was going to be shot, he immediately ducked down across the front seat of his patrol car and un-holstered his weapon. Deputy [redacted] said he then sat up and saw Suspect Franks still pointing the gun at him, moving it side to side as if he was trying to get a good sight on him [redacted]

Deputy [redacted] said he repositioned himself behind the drivers door of his patrol car. He said fearing that Suspect Franks was going to shoot him, he [redacted] fired 5 to 8 rounds at the suspect, from his Beretta. Suspect Franks fell back into the trunk of the vehicle and his (Franks') gun fell to the street. Suspect Fetters then immediately put his hand out the drivers window.

Deputy [redacted] advised responding units, via his radio that he had just been involved in a shooting. Seconds later, several units arrived and Suspect Fetters was taken into custody without incident. Deputy [redacted] said he was removed from the shooting scene and transported to the command post.

SWORN WITNESS STATEMENTS:

Deputy Granek, Michael

On March 05, 2004, at approximately 1930 hours, Investigator Barron interviewed Deputy Granek at Norwalk Station. I (Sgt. Sutton) was present during the interview. The following is a summary of that interview (Refer to Homicide Book, Exhibit #A, Page #7).

Deputy Granek is assigned to the Aero Bureau and on March 05, 2004 he was working as the Observer in "Air-7." Deputy Cynthia Olesinski (# [redacted] was the pilot. At approximately 1330 the were flying routine patrol over the City of Norwalk when they heard radio traffic of a bank robbery that just occurred. The location was the Washington Mutual Bank located at the corner of Fallon Avenue and Rosecrans Avenue. Deputy Granek advised patrol units that they would be overhead in 15 seconds.

Prior to arriving Deputy Granek received information that the suspects had fled in a white Cadillac. Upon arriving overhead, Deputy Granek saw a white Cadillac traveling slowly, westbound on Van Ruiten Street. Deputy Granek said the trunk on the Cadillac was slightly open and a white "Public Safety" vehicle was following the suspect vehicle. Deputy Granek said he immediately advised responding units of the suspect vehicle's location.

Deputy Granek said the suspect vehicle turned north onto Roseton Avenue from Van Ruiten Street. He said a patrol car pulled up behind the suspect vehicle. The suspect vehicle then pulled over to the east curb of Roseton Avenue. Deputy Granek said the trunk of the suspect vehicle was open and it appeared as if someone was inside the trunk. He said because of their altitude he was unable to see what the person in the trunk was doing. Deputy Granek then saw the windshield of the suspect vehicle shattering. He then heard "998" broadcast over the radio and noticed that the person was still inside the trunk, but not moving. The driver of the suspect vehicle had both hands outside the drivers side window.

Deputy Granek said he initiated a containment of the area and kept a close eye on the driver, until he was taken into custody.

Deputy Granek said his partner (Deputy Olesinski) could not observe the incident due to the fact she was flying the helicopter.

CIVILIAN WITNESS STATEMENTS:

Yordt, Joshua

On March 05, 2004, at approximately 1935 hours Mr. Yordt was interviewed by Sergeant Brackpool at Norwalk Station. Sergeant Rick Smith of Internal Affairs Bureau was present during the interview. The following is a summary of that interview (Refer to Homicide Book, Exhibit #A, Page #8).

Officer Yordt is employed by the City of Norwalk as a Public Safety Officer. On March 05, 2004 he was assisting Norwalk Station deputies with a traffic collision on Rosecrans Avenue, just east of the Washington Mutual Bank. Officer Yordt was about eighty feet from the bank when he heard several civilians yelling "police, police , that guy just robbed the bank." Officer Yordt looked west and saw a male white (Suspect Franks) running northwest through the parking lot, on the north side of Rosecrans Avenue. He believed Suspect Franks was carrying a gun and a money bag.

Officer Yordt said he drove his marked "Public Safety" vehicle following Suspect Franks. He said when Suspect Franks reached the area of Van Ruiten Street, he ran towards the trunk area of a white Cadillac. Officer Yordt said the trunk on the vehicle opened, Suspect Franks got into the trunk and pulled the lid down.

Officer Yordt said he advised , over his police radio what he had seen and that the suspect vehicle was driving west on Van Ruiten Street. He said the suspect vehicle then turned north on Roseton Avenue. Seconds later Deputy [redacted] drove in behind the suspect vehicle. The suspect vehicle then pulled to the east curb, approximately [redacted] to [redacted] houses north of Van Ruiten Street.

Officer Yordt said he saw Deputy [redacted] stop his patrol car in the middle of the street, behind the suspect vehicle. Deputy [redacted] exited his car and Officer Yordt saw him pointing his handgun at the suspect vehicle. Officer Yordt said the trunk of the suspect vehicle opened and a man (Suspect Franks) sat "upright" in the trunk and pointed a handgun at Deputy [redacted] He described Suspect Franks as having his arm "outstretched," pointing the gun at Deputy [redacted] Officer Yordt then heard 3 to 4 shoots and immediately drove away on Van Ruiten Avenue until it was safe.

[redacted]

On March 05, 2004, at approximately 1911 hours Mr. [redacted] was interviewed by Investigator Barron at Norwalk Station. I (Sgt. Sutton) was present during the interview. The following is a summary of that interview (Refer to Homicide Book, Exhibit #A, Page #4).

Mr. [redacted] said he lives at [redacted] On March 05, 2004, at approximately 1330 hours, he said he was in his front yard with his friend [redacted] Mr. [redacted] said they were outside stripping wire when they heard a helicopter flying overhead.

Mr. [redacted] then saw a white Cadillac driving westbound on Van Ruiten Street, then turn north onto Roseton Avenue. He said the car was driving approximately 5 MPH. He said the driver was an older white male (Suspect Fetters) who was the only occupant. Mr. [redacted] then saw a police car following the Cadillac. He said the Cadillac came to a stop in front of his house. He said the police car was stopped approximately 3 car lengths behind the Cadillac. He also said the overhead lights on the police car were not activated.

Mr. [redacted] said before the suspect vehicle came to a complete stop the trunk quickly popped open. The deputy (Deputy [redacted] stopped, opened his drivers door and positioned himself crouched down behind the door. He said Deputy [redacted] was pointing his gun towards the rear of the suspect vehicle. Mr. [redacted] said he could hear Deputy [redacted] yelling something to the effect of "get down, get down."

Mr. [redacted] said he turned and ran next door to his [redacted] house, located at [redacted] He said as he was running he heard four to five gunshots. Mr. [redacted] said approximately ten to fifteen minutes later he exited his [redacted] home and was contacted by deputies. He added that when the trunk on the suspect vehicle popped open, he was unable to see from his position if anyone was inside.

[redacted]

On March 05, 2004, at approximately 1920 hours Mr. [redacted] was interviewed by Sergeant Brackpool at Norwalk Station. Sergeant Rick Smith of Internal Affairs Bureau was present during the interview. The following is a summary of that interview (Refer to Homicide Book, Exhibit #A, Page #5).

Mr. [redacted] said he was standing in the front yard of his friend's [redacted] home when he heard a helicopter overhead. He then looked south and saw the suspect vehicle (white Cadillac) driving slowly north on Roseton Avenue towards him. Mr [redacted] said only the driver was inside the car, who he described as a male Hispanic "in his 40's" (Suspect Fetters).

Mr [redacted] said he saw a "police officer" pull up behind the suspect vehicle and "turn his lights on." He said the suspect vehicle stopped and the driver reach downward and popped the trunk. Mr [redacted] said the driver was looking in his rear view mirror and "had a grin on his face."

He said when the trunk opened a man (Suspect Franks) came out, pointing a gun at the deputy (Deputy [redacted] and "that's when shots were fired." Mr [redacted] said he did not see the head or left arm of Suspect Franks when he came out of the trunk. He added that Suspect Franks brought the gun across his chest, then pointed it at Deputy [redacted] Mr [redacted] said Suspect Franks' gun looked like a black semiautomatic handgun.

Mr [redacted] was uncertain if Suspect Franks fired his gun, but he knew the deputy (Deputy [redacted] fired his weapon. After the shooting Mr [redacted] said he ran north to another house and was later contacted by deputies.

[redacted]

On March 05, 2004, at approximately 2035 hours, Mr [redacted] was interviewed by Investigator Ramirez. The following is a summary of that interview (Refer to Homicide Book Exhibit #A, Page #40).

Mr. [redacted] at [redacted] Mr [redacted] said sometime during the above incident he heard approximately five gunshots, north of his home. He looked out his livingroom window and saw deputies pointing their guns at a vehicle that was parked in front of them.

Approximately one hour later he saw deputies in army fatigues surround the vehicle. Seconds later he heard a loud bang. Mr [redacted] could provide no other information.

[redacted]

On March 05, 2004, at approximately 2040 hours, Ms. [redacted] was interviewed by Investigator Ramirez. The following is a summary of that interview (Refer to Homicide Book, Exhibit #A, Page #40).

Some time during the above incident, Ms. [redacted] said she was inside her home when she heard five gunshots. She then looked out her livingroom window and saw deputies pointing their guns at the suspect vehicle. Ms [redacted] then went to the rear of her home and shortly after that she heard a loud bang. Ms [redacted] could provide no other information.

[redacted]

On March 05, 2004, Deputy Steele (# [redacted] was approached by Ms [redacted] who lives at [redacted] Ms. [redacted] said sometime during the above incident she was in her livingroom when she heard four to six gunshots. A few minutes after the gunshots she looked out her front window and saw deputies pointing their guns at a white car. Ms. [redacted] could provide no other information (Refer to Homicide Book, Exhibit #A, Page #51).

[redacted]

On March 05, 2004, Ms. [redacted] was interviewed by Deputy Broad (# [redacted] at her home, located at [redacted] The following is a summary of that interview (Refer to Homicide Book, Exhibit #A, Page #62).

Ms [redacted] said At approximately 1345 hours her [redacted] had just arrived at her home and she was standing in the livingroom with the front door open. Ms. [redacted] then heard four to five gunshots. She closed her front door and took her children to the rear of her home. A short time later she looked out her southwest window and saw a police car. Ms. [redacted] could provide no other information.

[redacted]

On March 05, 2004, Mr [redacted] was interviewed by Deputy Board at his [redacted] home. The following is a summary of that interview (Refer to Homicide Book, Exhibit #A, Page #62).

Mr. [redacted] stated essentially the same as his [redacted] Ms. [redacted]

[redacted]

On March 05, 2004, Ms. [redacted] was interviewed by Deputy Board at her home, located at [redacted] The following is a summary of that interview (Refer to Homicide Book, Exhibit #A, Page #62).

Ms. [redacted] said she was in her kitchen when she heard five to six gunshots. She did not hear or see anything further.

SUSPECT STATEMENTS:

Fetters, Dennis

On March 05, 2004, at approximately 2250 hours, Sergeant Brackpool and Investigator Barron interviewed Suspect Fetters at Norwalk Sheriff's Station. The following is a summary of that interview.

Suspect Fetters said he is a transient and met Suspect Franks in October of 2003 at a freeway off-ramp located at Paramount Boulevard and the 91 Freeway. He said Suspect Franks was working as a truck driver when he (Franks) tested positive for drugs in November of 2003 and was terminated.

Suspect Fetters said on March 05, 2004 at approximately 0950 hours he was at the same freeway off-ramp when Suspect Franks approached him. He said Suspect Franks asked him (Fetters) if he wanted to go to his (Franks) house and use some heroin. Suspect Fetters agreed and went to Suspect Franks' home.

They used the heroin, then at approximately 1130 hours Suspect Franks asked Suspect Fetters if he wanted to make some money driving. Suspect Franks told Suspect Fetters he was going to "rob" a place and he needed him (Fetters) to drive his (Franks) car. Suspect Franks told him that he would hide in the trunk after the robbery. Suspect Fetters said Suspect Franks removed a pillow from the house and placed it in the trunk. Suspect Fetters also saw a change of clothes in the trunk. Suspect Franks indicated that after the robbery Suspect Fetters was to pop open the trunk when he approached that car.

Suspect Franks said he would pay Suspect Fetters eight to ten percent of the money after the robbery. He said Suspect Franks expected to steal about $20,000.00.

Suspect Fetters said on March 05, 2004, Suspect Franks drove to the Washington Mutual Bank (location) from Long Beach as he (Fetters) rode in the front passengers seat. When they arrived in the area of the bank they observed a traffic collision up ahead. Suspect Fetters said this concerned Suspect Franks but he still pulled into the parking lot of the bank. Suspect Franks exited the car and told Suspect Fetters to wait for him and reminded him to open the trunk when he approached the car. Suspect Franks also told him that if they were stopped by police to open the trunk. Suspect Fetters said Suspect Franks was armed with pellet gun in his waistband. After Suspect Franks exited the car Suspect Fetters sat in the drivers seat.

Suspect Fetters said approximately five to ten minutes later, Suspect Franks was running towards the car with a "stressed out" look on his face. Suspect Fetters said he popped the trunk and Suspect Franks got and pulled down the lid, but did not close it completely. Suspect Fetters said he drove away from the location and saw a white car with a yellow light behind him(Officer Yordt). He also saw a police car (Deputy [redacted] behind the white car.

Suspect Fetters said he did not believe that the overhead lights were activated on the police car, but he pulled over to the curb and stopped. Suspect Fetters then activated the trunk release button and yelled at Suspect Franks, "Don, there on us." He then heard Suspect Franks yell "open the trunk."

Suspect Fetters said he heard the deputies saying something but he could understand them. He then heard gunshots and the windshield shattered. Suspect Fetters said as soon as the gunshots stopped he stuck his hands out the window, because he did not want to get shot. He said he was then taken into custody.

Franks, Donald (deceased)

No statements obtained.



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

STEVE COOLEY • District Attorney
CURT LIVESAY• Chief Deputy District Attorney
CURTIS A. HAZELL • Assistant District Attorney

RICHARD D. DOYLE • Director

September 22, 2004

Captain Raymond Peavy
Los Angeles County Sheriff's Department
Homicide Bureau
5747 Rickenbaker Road
Commerce, CA 90040

In Re: J.S.I.D. File #: 04-0213
L.A.S.D. File #: 004-04506-0455-013

Dear Captain Peavy:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 5, 2004 fatal shooting of Donald Franks by Deputy [redacted] We have concluded that Deputy [redacted] acted reasonably and lawfully in self-defense and the defense of others during this incident.

The following analysis is based upon reports prepared by the Los Angeles County Sheriff's Department (LASD) and submitted to this office on August 18, 2004 by Sergeant Chris Brackpool and Investigator Margarita Barron of the Los Angeles County Sheriff's Department, Homicide Bureau. The District Attorney's Command Post was notified of this incident and Deputy District Attorney Christina Fleming and District Attorney Senior Investigator [redacted] immediately responded to the scene. They were given a briefing and a walk-through of the scene by the investigators. No compelled statements were considered by this office.

FACTUAL ANALYSIS

On March 5, 2004 at approximately 1:20 p.m., Deputy William Tauson was investigating a traffic collision near the intersection of Flallon Avenue and Rosecrans Avenue, Norwalk. Adjacent to this intersection is the Norwalk Branch of Washington Mutual Bank, 11618 Rosecrans Avenue, Norwalk. At approximately 1:36 p.m., Donald Franks entered the bank, brandished a handgun, and demanded money from the bank tellers. The tellers complied and Franks took money from their cash drawers. Franks fled the bank out of the south door. Employees ran out of the bank yelling that the bank had just been robbed. Norwalk Public Safety Officer Joshua Yordt was assisting Deputy Tauson with the traffic accident. Bank employees pointed-out the suspect, Donald Franks, to Officer Yordt as he ran northbound across Rosecrans Avenue.

Officer Yordt watched Donald Franks run into a parking lot on the north side of Rosecrans Avenue, where he dove into the trunk of a waiting white Cadillac, and pulled down the trunk lid. The Cadillac, which slowly drove north through the parking lot and out of view, is registered to Donald Franks. Both Deputy Tauson and Officer Yordt put out crime broadcasts via their radios.

Moments later, Deputy [redacted] saw the Cadillac driving westbound on Van Ruiten Street. As Deputy [redacted] began to follow it, the Cadillac turned northbound on Roseton Avenue. The Cadillac pulled to the curb in front of [redacted] Roseton Avenue, Norwalk without being signaled to do so. As Deputy [redacted] stopped his patrol car, the Cadillac's trunk lid suddenly popped open and Donald Franks pointed a dark colored, semi-automatic pistol at Deputy [redacted] Deputy [redacted] fired eight rounds at Franks. Franks was struck once in the abdomen and was pronounced dead at the scene by attending paramedics. The driver of the Cadillac was identified as Dennis Fetters who was taken into custody.

The Cadillac was facing northbound on Roseton Avenue. Two car lengths to the rear of the Cadillac was Deputy [redacted] LASD patrol car. On the ground, immediately to the rear of the Cadillac, was found a black Crossman CO2 air pistol which resembled a full size black semi-automatic pistol. The air pistol was loaded with an air cartridge and eight pellet rounds. The hammer was cocked, with the safety off and one pellet directly underneath the hammer. Eight 9mm shell casings were recovered from in, on, and near the LASD patrol car. One bullet struck the Cadillac's trunk lid, penetrated the rear window, and entered the front windshield. A second round shattered the Cadillac's rear window and penetrated the front windshield. Two bullet ricochet marks were found on the Cadillac's roof. Donald Franks was found lying inside the Cadillac's trunk, surrounded by $8,231.00 in United States currency.

Investigators spoke with the victim tellers and witnesses who were inside the bank at the time of the robbery. New Accounts Representative [redacted] told investigators that she was approached by Donald Franks as she exited the deposit room. He had deposit slips in his left hand, and mumbled something about a deposit. As she leaned closer to hear him, he raised the right side of his jacket and displayed a black pistol in his waistband. Franks then said, "Don't make me use it! Open the door! No dye packs and no alarms!" [redacted] then walked toward the teller door, keyed it open, and walked in with Franks following her. [redacted] told all of the tellers to open their drawers. When one teller hesitated, Franks withdrew the pistol from his waistband, pointed it in the air, and yelled, "Open the drawers!" All of the tellers complied and stepped back from their respective cash drawers. Franks then grabbed United States currency from four cash drawers, stuffed it into his jacket, and ran out of the bank.

[redacted] teller at window # [redacted] and the first teller robbed by Donald Franks, stayed in the area and studied Franks and his actions. She made a positive photo lineup identification of Franks. [redacted] made a tentative photo lineup identification of Franks' photo # [redacted] and of another man, photo [redacted] saying, "It's one of these two guys." The other employees did not make photo lineup identifications of Franks. As Dennis Fetters never entered the bank, no employees were able to make a photo lineup identification of him.

Officer Joshua Yordt told investigators that he was assisting with a traffic accident near Washington Mutual Bank when several people ran out of the bank and one yelled, "Police! Police! The guy just robbed the bank!" He then saw Donald Franks running with either a gun or money bag in his hand. Franks ran to a white Cadillac where he dove into its trunk as the trunk lid opened. Officer Yordt watched the Cadillac slowly drive away and radioed his observations on his police radio. He continued to follow the Cadillac as Deputy [redacted] arrived and followed the car. Officer Yordt saw the Cadillac park next to the curb on Roseton Avenue. Deputy [redacted] stopped his patrol car in the street directly behind the Cadillac and drew his weapon. Officer Yordt saw the Cadillac's trunk lid open to reveal a person, Donald Franks, in an upright position pointing a handgun at Deputy [redacted] Franks had his arm "outstretched" toward Deputy [redacted] according to Officer Yordt. At that point, he heard three to four shots and moved east of the shooting scene until it was secured.

Deputy William Tauson spoke to investigators, and related that he was investigating a traffic accident at Flallon Avenue and Rosecrans Avenue when several people ran out of Washington Mutual Bank and told him the bank had just been robbed. He immediately put out a radio broadcast of this information. He heard Officer Joshua Yordt and Deputy [redacted] on their respective radios broadcasting that they were following the suspects in their Cadillac. Deputy Tauson was not present at the shooting scene. He only heard a gunshot from a distance.

Deputy Michael Granek, observer in Airship 7, told investigators that he monitored the radio broadcasts concerning the bank robbery that just occurred at Washington Mutual Bank. He saw a white Cadillac traveling slowly away from the bank, with its trunk lid partially open. He followed the Cadillac until it parked on Roseton Avenue. Deputy Granek saw the trunk lid still open and a person possibly inside. Once the Cadillac stopped, the trunk lid fully opened exposing a person inside. Next, Deputy Granek saw the shattering of the Cadillac's front windshield and the driver putting his hands out of the driver's side window. The person in the trunk was not moving. With his binoculars, he saw a gun on the ground behind the Cadillac.

[redacted] and his friend [redacted] told investigators that they were in [redacted] front yard at [redacted] stripping wire when they noticed a helicopter flying overhead and a slow moving white Cadillac parking in front of the house. They saw a patrol car following the Cadillac. As the Cadillac was parking, [redacted] noticed the trunk lid pop open. At this point, he ran next door and heard four to five gunshots. [redacted] saw the Cadillac's driver, Dennis Fetters, reach down and "pop the trunk." Next, a man in the trunk, Donald Franks, came out with a gun and pointed it at Deputy [redacted] He brought the gun up and out across his chest, and pointed it directly at Deputy [redacted] The gun was a black "semi-automatic." Then, shots were fired. [redacted] said the driver, Fetters, was looking in the rear view mirror and "had a grin on his face."

Deputy [redacted] was interviewed by investigators regarding the shooting. He said that he was assisting at the traffic collision site when he monitored the information about the bank robbery having just occurred at the Washington Mutual Bank branch nearby. Several people ran from across the street yelling that a robbery had just occurred. He followed Officer Joshua Yordt, who was following a white Cadillac. As the Cadillac slowly pulled to the curb and parked on Roseton

Avenue, Deputy [redacted] could see that the trunk appeared to be slightly open as the trunk lid was moving up and down. The driver, Dennis Fetters, appeared very nervous, looking around, looking in the rear view mirror, and over his shoulder. While still in his patrol car, Deputy [redacted] still had not activated his red lights when the Cadillac's trunk lid flew open and Donald Franks popped-up to his knees and pointed a gun in his direction. Deputy [redacted] ducked down on his passenger seat and unholstered his weapon. As [redacted] sat up, he could see Franks pointing and sighting a gun at him. Believing Franks was going to kill him, Deputy [redacted] positioned himself, crouched down behind his open driver's door, and fired eight rounds at Franks. The driver, Dennis Fetters, immediately put his hands out of the driver's side window.

Dennis Fetters was arrested at the scene and transported to the Norwalk Station where he was advised of and waived his Miranda rights. Fetters told investigators that he is a transient and met Donald Franks in October 2003. On March 5, 2004 at 9:50 a.m., Franks invited him to his residence in [redacted] for a "shot."[1] Once at the Franks' house, they shared a spoon of heroin and drank some beers. Franks asked Fetters if he wanted to make some money for "driving."

Donald Franks told Dennis Fetters that he was going to "rob" a place, and he wanted Fetters to drive his Cadillac. Franks said he would hide in the car's trunk after the robbery. Franks put a pillow and change of clothes in the trunk of the Cadillac. Franks offered to give Fetters 10% of the total he received, which he expected to be $20,000.00. As Franks approached the Cadillac after the robbery, Fetters was supposed to "pop" the trunk. If they were stopped by the police, Franks told Fetters to also open the trunk. Fetters knew Franks had a pellet gun concealed in his belt. Franks instructed Fetters to drive him to the Washington Mutual Bank. Fetters waited in the driver's seat of the Cadillac as Franks entered the bank. Five to ten minutes later, Franks came out of the bank and ran to the Cadillac having a "stressed" look on his face. At this time, Fetters popped the trunk and Franks got inside. But, he did not completely close the trunk's lid.

As Fetters drove away, he saw the officers' cars behind him. Without the emergency lights being activated, Fetters nevertheless pulled to the curb and parked. He activated the trunk lid release lever and popped the trunk stating, "Don, they're on us." Franks heard him and said, "Open the trunk!" Fetters heard Deputy [redacted] say something, but could not tell what. He next heard gunshots and the shattering of the front windshield. As soon as he heard the gunshots, he placed his hands outside of the driver's door window.

On prior occasions, Donald Franks told Dennis Fetters that he had gone to prison several times for robberies, and he was not going back to prison. Franks also declared his intentions to his [redacted] told investigators that Franks said he was not going back to [redacted] Franks' criminal history shows that he [redacted]

Dennis Fetters was charged in case #VA081549 with one count of murder in violation of Penal Code §187(a), four counts of second degree robbery in violation of Penal Code §211, and one count of assault on a peace officer in violation of Penal Code §245(c). Fetters pled guilty to the robberies.

[1] A "shot" refers to a shot of heroin.

On March 9, 2004, Deputy Medical Examiner Stephen Scholtz, M.D., performed an autopsy on Donald Franks. He ascribed the cause of death to be one gunshot would to the abdomen, which had no soot or stippling. The projectile was recovered. Toxicological reports show that Franks had both codeine and morphine in his system at the time of his death.

CONCLUSION

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming such right that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. *People v. Williams, (1977) 75 Cal.App.3d 731.*

In protecting oneself or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person in the same or similar circumstances to be necessary to prevent the injury which appears to be imminent. *California Jury Instructions – Criminal (CALJIC), 5.30 and 5.32.*

Actual danger is not necessary to justify the use of deadly force in self-defense or the defense of others. If one is confronted by the appearance of danger, which one believes would result in great bodily injury or death, and a reasonable person in the same position would so believe, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or merely apparent. *People v. Toledo, (1948) 85 Cal.App.2d 577.*

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight....The calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. *Graham v. Conner, (1989) 490 U.S. 386.*

When peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety. *People v. Collins, (1961) 189 Cal.App.2d 575.*

Donald Franks and Dennis Fetters planned and committed a bank robbery, a violent felony. Franks was armed with a deadly and dangerous weapon, a Crossman CO2 air pistol that was loaded with an air cartridge and eight pellets. The safety was off, the hammer cocked, and one pellet directly beneath the hammer. With that weapon, Franks was capable of inflicting great bodily injury upon anyone he targeted with it. During the course of the bank robbery, Franks terrorized and threatened multiple bank employees and customers by demanding money and brandishing his weapon, which resembled a black semi-automatic pistol.

Prior to the bank robbery, Donald Franks had declared his intention of never returning to state prison to both Dennis Fetters and [redacted] Franks' [redacted] Franks' directive to Fetters,

should they be stopped by police, was to open the trunk where Franks would be hiding. It is clear that Franks, with his weapon in hand, intended to confront any law enforcement authorities that tried to stop him. Multiple eyewitness accounts confirm that Franks carried-out his intention as he opened the Cadillac's trunk and pointed his weapon at Deputy [redacted]

Donald Franks' actions were very precipitous and highly provocative causing Deputy [redacted] to fear for his life. Franks pointed a deadly and dangerous weapon at Deputy [redacted] that resembled a black semi-automatic pistol. Out of a tremendous and heightened concern for his safety believing he was about to be shot and killed, Deputy [redacted] took cover, drew his weapon, and fired eight rounds at Franks. One round hit Franks in his abdomen fatally wounded him.

Based upon these facts, we find that Deputy [redacted] acted reasonably and lawfully when he fired his weapon in self-defense and the defense of others. In accordance with this conclusion, we are closing our file and will take no further action in this matter.

Very truly yours,

STEVE COOLEY
District Attorney

By: William H. Johnson

WILLIAM H. JOHNSON
Deputy District Attorney
(213) 974-5089

c: Deputy [redacted] # [redacted]